United Nations A/AC.254/21

General Assembly

Distr.: General
26 November 1999

Original: English

Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime
Sixth session
Vienna, 6-17 December 1999

Common provisions of the draft Convention against Transnational Organized Crime and the draft Protocols thereto

Note by the Secretariat

I. Introduction

1. At its fifth session, held in Vienna from 4 to 15 October 1999, the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime decided that at its sixth session it would devote part of its informal consultations to an overview of provisions that could be considered common to the draft Convention and the draft Protocols thereto. The present note is submitted by the Secretariat to assist the Ad Hoc Committee in its deliberations.

II. Common provisions

2. The term "common provisions" may not reflect adequately the matters that the Ad Hoc Committee has decided to address with the review it will undertake at the informal consultations to be organized during its sixth session. It is used here to refer to provisions of the draft Convention and draft Protocols thereto intended to deal with similar issues. Those issues fall under several broad categories and are all related to the needs created by the purposes of the draft Convention and draft Protocols thereto.

3. There are two points that the Ad Hoc Committee may find useful to take into consideration in its review. Firstly, the draft Protocols are designed to address very specific issues. That specificity would require that many of the common provisions be supplemented by additional language. Secondly, the draft Protocols are often inconsistent, both with one another and with the draft Convention, in the language used in provisions designed to address identical matters. Those inconsistencies can be explained in part by the

fact that the drafts were prepared by different delegations at different times. No effort has been undertaken to date to bring the texts into line with each other. The Ad Hoc Committee may wish to explore whether its review of the common provisions may also have as a goal to eliminate inconsistencies in the draft texts.

4. The table that follows contains the provisions of the draft Convention and draft Protocols that address similar matters. The current text of those provisions can be found in documents A/AC.254/4/Rev.5 (revised draft Convention), A/AC.254/4/Add.1/Rev.3 (revised draft Protocol against the Smuggling of Migrants by Land, Air and Sea), A/AC.254/4/Add.2/Rev.2 (revised draft Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition and Other Related Materials) and A/AC.254/4/Add.3/Rev.4 (revised draft Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children). The provisions cited are divided into six general categories, in line with the issues they are intended to address:

Category	*Convention*	*Migrants Protocol*	*Firearms Protocol*	*Trafficking in Persons Protocol*
Confiscation	Articles 7, 7 *bis* and 7 *ter*	(No specific provision)	Article VII	Article 5 *bis*
Jurisdiction	Article 9	Article 6	Article VI	(No specific provision)
International cooperation	Articles 10 and 14	(No specific provision)	Article XV	(No specific provision)
Implementation measures	Article 23 *ter*	Articles 8 and 9	(No specific provision)	Article 14
Exchange of information	Articles 19, 20 and 22	Articles 10 and 11	Article XIV	Article 8
Technical cooperation	Article 21	Article 14	Articles XVI and XVIII	(No specific provision)

5. The review of the common provisions could be carried out without prejudice to the content of those provisions. In view of the general nature of the matter, the review could be made without affecting the performance of the mandated functions of the Ad Hoc Committee or limiting its discretion regarding the final formulation of the provisions under review. In fact, achieving consistency between the draft Convention and the draft Protocols, as well as between the draft Protocols themselves, would be conducive to the implementation of the mandate of the Ad Hoc Committee, as it would obviate the need to revisit provisions dealing with similar or identical matters after the Ad Hoc Committee has negotiated their formulation and attained consensus on their content in the framework of the draft Convention.

6. In that context, the Ad Hoc Committee may wish to consider the following:

(a) In which of the above-mentioned provisions of the draft Protocols it would be appropriate to make applicable by reference the corresponding provision or provisions of

the draft Convention (for example, by stating that the corresponding provision(s) would apply *mutatis mutandis*);

(b) Which of the above-mentioned provisions of the draft Protocols would require additional language to ensure that the specificity of the draft Protocol is adequately reflected and served;

(c) Whether there is a particular need to add provisions to draft Protocols that at present contain no specific provisions in any of the above categories, along the lines of (a) and (b) above.

III. Final provisions

7. The draft Convention and draft Protocols contain final provisions, as is customary with all international legal instruments. However, for the reasons already stated above, the current texts of the draft Protocols are not consistent with each other or with the draft Convention. The economy of the texts and standard practice regarding the structure of international legal instruments would require that the draft Protocols contain such final provisions. Without prejudice to the final formulation of those provisions, the Ad Hoc Committee may wish to consider whether it would be appropriate to direct the Secretariat to insert in each of the draft Protocols final provisions that would be identical to those of the draft Convention. The table that follows indicates the current final provisions of the draft Convention and draft Protocols:

Convention	*Migrants Protocol*	*Firearms Protocol*	*Trafficking in Persons Protocol*
Articles 25, 26 and 27-30	Articles 17-19	Articles XVIII *ter*, XVIII *quater*, XIX and XIX *bis*	Articles 17 and 18